

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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MOORE DRY DOCK COMPANY, a corporation,  
Appellant,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District, MARGARET HOWLAND, a widow and KENNETH HOWLAND, a minor,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California  
Southern Division.

FILED

AUG 18 1937

PAUL P. O'BRIEN,  
Clerk



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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MOORE DRY DOCK COMPANY, a corporation,  
Appellant,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

### Attorneys for Plaintiff and Appellant:

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San Francisco, Calif.

HAROLD M. SAWYER, Esq.,  
351 California St.,  
San Francisco, Calif.

### Attorneys for Defendant and Appellee W. H. Pillsbury, etc.:

H. H. McPIKE,  
U. S. Attorney,

SYDNEY P. MURMAN,  
Assistant U. S. Attorney,  
P. O. Bldg.,  
San Francisco, Calif.

### Attorneys for Defendants and Appellees M. and K. Howland:

KEITH & CREEDE, Esqrs.,  
Mills Tower,  
San Francisco, Calif.

In the Southern Division of the United States District Court, for the Northern District of California.

No. 4181-R.

MOORE DRY DOCK COMPANY, a corporation,  
Plaintiff,

vs.

WARREN H. PILLSBURY, Deputy Commissioner of United States Employees' Compensation Commission for the 13th Compensation District, MARGARET HOWLAND, a widow, and KENNETH HOWLAND, a minor,  
Defendants.

COMPLAINT IN EQUITY FOR INJUNCTION.

To the Honorable, the Judges of the United States District Court for the Southern Division, Northern District of California:

The complaint in equity of Moore Dry Dock Company, a corporation, respectfully shows as follows:

I.

That plaintiff, Moore Dry Dock Company, was at all the times herein mentioned, and now is, a corporation duly created, organized and existing under the laws of the State of California [1]\*

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\* Page numbering appearing at the foot of page of original certified Transcript of Record.



engaged in carrying on business within said State and elsewhere, and within the 13th Compensation District and within this district, and is a citizen and resident of said State and of this district.

## II.

That defendant, Warren H. Pillsbury, was at all the times herein mentioned, and now is, the duly qualified and acting Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District, with offices at San Francisco, California, and a citizen and resident of said State and of this district.

## III.

That defendant, Margaret Howland was, at all times subsequent to the 21st day of March, 1936, the widow of William H. Howland, and that defendant, Kenneth Howland was, at all the times herein mentioned, and now is, the minor son of said William H. Howland, deceased, and said defendant, Margaret Howland, and that both of said defendants are residents and citizens of the State of California and of this district.

## IV.

That plaintiff, Moore Dry Dock Company, was at all the times mentioned herein, and now is, engaged in the conduct and operation of a ship-building and ship repair plant situated on the

Oakland Estuary in the County of Alameda and within the said State of California, the said 13th Compensation District, and this district, and in the course of the conduct of its said business it was, at all the times herein mentioned, and now is, engaged in the operation of a certain power launch or tug known as the "Moore No. 2", 57 feet long, 14 foot beam and of a tonnage of 16 tons net, in use for the purpose of assisting vessels in and about the said shipyard of plaintiff and on and off dry-docks therein contained and navigating, in the business of plaintiff, the [2] waters of San Francisco Bay and tributaries.

V.

That at all the times herein mentioned plaintiff was, and now is, qualified as a self-insurer under the Longshoremen and Harbor Workers' Compensation Act.

VI.

That this cause arises under a law of the United States, to-wit, the Longshoremen and Harbor Workers' Compensation Act, and that the amount in controversy is, exclusive of interest and costs, in excess of the sum or value of Three thousand dollars, (\$3,000.00).

VII.

That on or about the 21st day of March, 1936, said William H. Howland, while performing serv-

ices for plaintiff as plaintiff's employee, on said launch or tug "Moore No. 2", then lying on the navigable waters of the United States at plaintiff's said shipyard, sustained personal injury occurring in the course of and arising out of his employment and resulting in death within a few minutes, in that while making some repairs on the deck of said launch to certain of its equipment he fell into the water and was drowned.

### VIII.

That thereafter and on or about the 26th day of February, 1937, defendant Margaret Howland made claim for compensation by reason of the death of said William H. Howland under the terms and provisions of said Longshoremen and Harbor Workers' Compensation Act before defendant, Warren H. Pillsbury, and hearing thereon was held by said defendant, Warren H. Pillsbury, at Oakland, California, on the 27th day of March, 1937, at which time evidence was produced upon the issue of the character of the employment of said William H. Howland and his duties in connection therewith; that said hearing was continued to April 3, 1937 [3] and was subsequently continued to April 10 1937 and that on the 5th day of May, 1937, said defendant, Warren H. Pillsbury, made and entered his compensation order and award of compensation, a copy of which is hereto attached, marked "Exhibit

1'', and by this reference made a part hereof as though fully set forth herein.

### IX.

That from the uncontradicted evidence produced at said hearings, said defendant, Warren H. Pillsbury, found as follows:

(a) That said William H. Howland left surviving and wholly dependent upon him for support his said wife, defendant Margaret Howland, born July 31, 1881, and a minor son, defendant Kenneth Howland, born November 14, 1919 and approximately 16 years of age at the time of the death of said William H. Howland, who were living with him and supported by him at the time of his death.

(b) That notice of death was given within thirty days after the date of the injuries sustained by the said William H. Howland to plaintiff and to defendant, Warren H. Pillsbury; that no medical treatment was required and that the average annual earnings of the said William H. Howland at the time of his death amounted to the sum of \$1,040.00; that there was no period of disability intervening between the time of the injury of the said William H. Howland and the time of his death;

(c) That said William H. Howland prior to his death had been carried upon the payroll of plaintiff's employees as a "rigger" and was paid



at an hourly rate for such work as was available for him in plaintiff's shipyard at rigger's wages; that most of his working time was devoted to services performed in and about, on and in connection with the operation of said launch while used by plaintiff to assist vessels entering or leaving said shipyard or the drydock therein, and in occasional errands about San Francisco Bay for the sole purposes of plaintiff; that upon [4] infrequent occasions said William H. Howland was given work as a rigger on land, not in connection with the operation of said launch; that while engaged in working on said launch he rendered the services usually performed by a deckhand, such as handling lines, mooring and unmooring the launch, keeping it clean, making occasional small repairs, serving on it while assisting ships entering or leaving the said shipyard or drydock, and that such services were rendered not only when the launch was actually in use, but also when it was tied up and moored; that said launch never left the waters of San Francisco Bay and tributaries and never went to sea, and that it was not necessary that the deckhand employed thereon should be qualified as a seaman; that said launch was, at all the times mentioned herein, operated by a personnel consisting of only two men, the master thereof, Captain George B. Marshall, and the deckhand thereon, said William H. Howland; that said William H. Howland ate and slept at home and that there were no accom-

modations for eating or sleeping on said launch; that he usually worked an eight-hour day on said launch, but was occasionally paid overtime for additional hours; that all the times herein mentioned said William H. Howland was employed exclusively by plaintiff and no one else.

### X.

That by and pursuant to the said award of compensation, said defendant, Warren H. Pillsbury, held that the employment of said William H. Howland was essentially that of a harbor worker and not that of a seaman, as said term is used in the Longshoremen and Harbor Workers' Compensation Act, and that he was not a member of the crew of a vessel at the time of his injury and death.

### XI.

That the award of compensation was therefore made against plaintiff in favor of defendant, Margaret Howland, for the support [5] of herself and her minor son, defendant Kenneth Howland, in the sum of \$522.00 forthwith as of May 1, 1937, less, however, the sum of \$125.00 to be deducted therefrom and paid by plaintiff to James R. Agee and Edmund D. Leonard, attorneys for defendant, Margaret Howland, as their attorneys' fee, and the further sum to defendant, Margaret Howland, of \$9.00 a week payable in installments each two weeks or monthly at her election for the period

prescribed by law, and the further sum of \$200.00 to said defendant, Margaret Howland, for burial expense.

## XII.

That on the 20th day of May, 1937, defendant, Warren H. Pillsbury, modified said compensation order and award of compensation made May 5, 1937 by increasing the allowance for attorneys' fees from \$125.00 to \$200.00, a copy of which modification is attached hereto, numbered "Exhibit 2", and by this reference made a part hereof as though fully set forth herein.

## XIII.

That the decision of defendant, Warren H. Pillsbury, that the employment of said William H. Howland was essentially that of a harbor worker and not that of a seaman as said term is used in the Longshoremen and Harbor Workers' Compensation Act, and that he was not a member of the crew of a vessel at the time of his injury and death, is entirely unsupported by and is directly contrary to the findings herein set forth and based upon the undisputed evidence given on behalf of plaintiff at said hearings.

## XIV.

That the said determination and decision of the defendant, Warren H. Pillsbury, is invalid and erroneous and not in accordance with law for the

reason that said William H. Howland at the time of his said injury and death was in fact and in law a seaman and a member of the crew of a vessel and not a harbor worker within the meaning of said Longshoremen and Harbor Workers' [6] Compensation Act, and that therefore said William H. Howland was not, at the time of his said injury and death, subject to the operation of said Longshoremen and Harbor Workers' Compensation Act, and said defendant, Warren H. Pillsbury, had no jurisdiction to make said award and said defendants, Margaret Howland and Kenneth Howland are not entitled to the benefits of said Act nor to the terms and provisions of said award.

#### XV.

That plaintiff has no adequate nor any remedy at law and that said Longshoremen and Harbor Workers' Compensation Act provides that plaintiff may begin this proceeding in this court to suspend and set aside, in whole or in part, through injunction proceedings, said compensation order.

#### XVI.

That neither said award, nor any part thereof, has as yet been paid by plaintiff and unless payment of the amounts required by the said award shall be stayed pending final decision in this suit, plaintiff will be required to pay, under the terms of said award, large amounts of money, and in the event that final decision of this suit should be



that the said award is void and of no effect, plaintiff will be unable to recover payments made under said award for the reason that the defendants, Margaret Howland and Kenneth Howland, are financially irresponsible and have insufficient means to respond to any judgment which plaintiff might recover against them, to plaintiff's great and irreparable damage.

WHEREFORE, plaintiff prays:

1. That said defendant, Warren H. Pillsbury, be ordered to certify to this Court his proceedings, findings and determination, and to certify the record of the proceedings, testimony and evidence submitted at the hearings before him on March 27, 1937, [7] April 3, 1937 and April 10, 1937;

2. That at a time to be fixed by the Court for the hearing of this suit, the Court proceed to hear the cause de novo;

3. That pending final determination of this cause, the Court make its order suspending said award and relieving plaintiff from compliance therewith;

4. That upon final hearing of this cause the Court make its decree that the said award be suspended and set aside, annuled and vacated, and that an injunction issue herein perpetually restraining the enforcement of said compensation order and award of compensation;

5. That plaintiff may have such other, different and further relief as to the Court may seem equitable or just in the premises.

EMMETT CASHIN

HAROLD M. SAWYER

Solicitors for Plaintiff. [8]

State of California,

City and County of San Francisco—ss.

A. R. VINER, being first duly sworn, deposes and says:

That he is an officer, to-wit, Assistant Secretary, of Moore Dry Dock Company, the corporation named as plaintiff in the foregoing action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

A. R. VINER

Subscribed and sworn to before me this 2nd day of June, 1937.

[Seal]

LULU P. LOVELAND

Notary Public in and for the City and County of San Francisco, State of California. [9]

“EXHIBIT 1”

UNITED STATES EMPLOYEES' COMPENSA-  
TION COMMISSION

13th Compensation District

CASE NO. 8-723

CLAIM NO. 1042

In the matter of the Claim for Compensation under  
the Longshoremen's and Harbor Workers'  
Compensation Act.

MARGARET HOWLAND, Widow, and

KENNETH HOWLAND, a Minor,

Claimants,

vs.

MOORE DRY DOCK COMPANY,

Employer.

Self-insurer

COMPENSATION ORDER AWARD OF  
COMPENSATION

Such investigation in respect to the above en-  
titled claim having been made as is considered  
necessary, and a hearing having been duly held in  
conformity with law, the Deputy Commissioner  
makes the following:

FINDINGS OF FACT

That on the 21st day of March, 1936, William H.  
Howland, husband and father of the claimants  
herein, was in the employ of the employer above  
named at Oakland, in the State of California in

the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was secured by self-insurance;

That on said day the said employee, while performing service for the employer on a launch then lying on the navigable waters of the United States at defendant's ship repair plant sustained personal injury occurring in the course of and arising out of his employment and resulting in death within a few minutes as follows: While making some repairs on the deck of said launch to certain of its equipment he fell into the water and was drowned; [10]

That the employee had been carried upon the payroll of the employer as a "rigger" and was paid at an hourly rate for such work as was available for him in defendant's shipyard at riggers' wages. Most of his working time was in connection with a launch used by the employer to assist vessels entering or leaving said shipyard or the dry dock therein, in occasional errands about San Francisco Bay only for the employer. Upon infrequent occasions the employee was given work as a rigger on land, not in connection with said launch. In working with said launch he rendered the service usually performed by a deck hand, such as handling lines, mooring and unmooring it, keeping it clean, making occasional small repairs, serv-

ing on it while assisting ships entering or leaving the yard or dry dock, etc., both when the launch was in use and when tied up. That said launch never went to sea, and that it was not necessary that the helper thereon be qualified a seaman. That the employee ate and slept at home and there were no accommodations for eating or sleeping on said launch. That he usually worked an eight-hour day thereon but was occasionally paid overtime for additional hours. That by reason of the foregoing it is found that the employment of said employee was essentially that of a harbor worker and not that of a seaman as said term is used in the Longshoremen's and Harbor Workers' Compensation Act, and that he was not a member of the crew of a vessel at the time of his injury and death;

That notice of death was given within thirty days after the date of such injury to the Deputy Commissioner and to the employer;

That medical treatment was not required;

That the average annual earnings of the claimant herein at the time of his death amounted to the sum of \$1040.00;

That there was no period of disability intervening between the time of the injury and the death;  
[11]

That the employee left surviving and wholly dependent upon him for support his wife, Margaret Howland, born July 31, 1881, and a minor son, Kenneth Howland, born November 14, 1919, and



approximately 16 years of age at the time of his death, who were living with him and supported by him at the time of his death. That said dependents are entitled to a death benefit of 45 per cent of the average weekly wages of the employee, or \$9.00 a week beginning with March 22, 1936 and payable for the period prescribed by law; amount accrued to the last hearing, May 1, 1937, 58 weeks, is \$522.00, no part of which has been paid;

That James R. Agee and Edmund D. Leonard, attorneys at law, have rendered legal service to the claimants in the prosecution of their claim of the reasonable value of \$125.00 and are entitled to lien for said amount upon compensation herein awarded;

That the funeral expenses exceeded over \$200.00. have been paid by Margaret Howland, and that she is entitled to reimbursement therefor.

Upon the foregoing facts the Deputy Commissioner makes the following:

#### AWARD

To claimant, Margaret Howland, for the support herself and her minor son Kenneth Howland, the sum of \$522.00 forthwith as of May 1, 1937, less however the sum of \$125.00 to be deducted therefrom and paid by defendant to James R. Agee and Edmund D. Leonard, claimant's attorneys, as their attorneys' fee, and the further sum to claimant of \$9.00 a week payable in installments each two weeks, or monthly at her election, for the period prescribed by law;

To claimant the further sum of \$200.00 upon the burial expense.

Given under my hand at San Francisco, California, this 5th day of May, 1937.

WARREN H. PILLSBURY

Deputy Commissioner

WHP:r

13th Compensation District

eb [12]

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“EXHIBIT 2”

UNITED STATES EMPLOYEES' COMPENSA-  
TION COMMISSION

13th Compensation District

CASE NO. 8-725

CLAIM NO. 1043

In the matter of the claim for compensation under the Longshoremen's and Harbor Workers' Compensation Act.

MRS. MARGARET HOWLAND, Widow, and  
KENNETH HOWLAND, a Minor

Claimants,

against

MOORE DRY DOCK CO.

Employer

Self-Insurer.

ORDER INCREASING ATTORNEYS' FEE

Upon a further specification of the amount of service performed by claimant's attorneys in the

above case and written consent of claimant, the fee fixed in the compensation order of May 5, 1937 for said attorneys is raised from \$125.00 to \$200.00 and lien granted therefor upon compensation herein awarded in the place and stead of the previous fee allowed.

Given under my hand at San Francisco, California, this 20th day of May, 1937.

WARREN H. PILLSBURY

Deputy Commissioner

WHP:eb

13th Compensation District.

[Endorsed]: Filed Jun 3, 1937. [13]

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District Court of the United States, Northern District of California, Southern Division

M D No. 22687 Civil. Received Jun 3 1937 U S Marshal's Office San Francisco, Calif.

IN EQUITY

THE PRESIDENT OF THE UNITED STATES  
OF AMERICA

To WARREN H. PILLSBURY, Deputy Commissioner of United States Employees' Compensation Commission for the 13th Compensation District, MARGARET HOWLAND, a widow and KENNETH HOWLAND, a minor,  
GREETING:

SUBPOENA.

YOU ARE HEREBY COMMANDED, that you be and appear in the Southern Division of the



United States District Court for the Northern District of California, aforesaid, at the Court Room in the City of San Francisco, within twenty days after service hereof, to answer a Bill of Complaint exhibited against you in said Court by MOORE DRY DOCK COMPANY, a corporation, which is a citizen of the State of California and to do and receive what the said Court shall have considered in that behalf.

WITNESS, the Honorable MICHAEL J. ROCHE, Judge of said District Court, this 3rd day of June in the year of our Lord one thousand nine hundred and thirty-seven and of our Independence the 161st.

[Seal]

WALTER B. MALING

Clerk.

By J. P. WELSH

Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12,  
RULES OF PRACTICE FOR THE COURTS  
OF EQUITY OF THE UNITED STATES

YOU ARE HEREBY REQUIRED to file your answer or other defense in the above suit on or before the twentieth day after service, excluding the day thereof, of this subpoena, at the Clerk's Office

of said Court, pursuant to said Bill: otherwise the said Bill may be taken Pro Confesso.

WALTER B. MALING

Clerk.

By J. P. WELSH

Deputy Clerk.

RETURN ON SERVICE OF WRIT

United States of America,  
District of —ss.

I hereby certify and return that I served the annexed Subpoena ad respondendum and Order to Show Cause on the therein-named Margaret Howland by handing to and leaving a true and correct copy thereof with Margaret Howland personally at Oakland, California in said District on the 4th day of June, A.D. 1937.

GEORGE VICE

U. S. Marshal.

By BERNARD J. WARD

Deputy.

RETURN ON SERVICE OF WRIT

United States of America,  
Northern District of California—ss.

I hereby certify and return that I served the annexed Subpoena ad respondendum and Order to Show Cause on the therein-named Kenneth Howland by handing to and leaving a true and correct copy thereof with Kenneth Howland per-

sonally at Oakland, Calif. in said District on the 4th day of June, A.D. 1937.

GEORGE VICE

U. S. Marshal.

By BERNARD J. WARD

Deputy.

RETURN ON SERVICE OF WRIT

United States of America,  
Northern District of California—ss.

I hereby certify and return that I served the annexed Subpoena ad respondendum and Order to show cause on the therein-named Warren H. Pillsbury Deputy Commissioner of United States Employees' Compensation Commission by handing to and leaving a true and correct copy thereof together with copy of complaint with C. de Hersor, Secretary to Warren H. Pillsbury personally at San Francisco, Calif. in said District on the 4th day of June, A.D. 1937.

GEORGE VICE

U. S. Marshal.

By BERNARD J. WARD Jr.

Deputy.

MARSHAL'S FEES

Travel	\$2.00
Service	12.00
	<hr/>
	\$14.00

[Endorsed]: Filed Jun 4, 1937. [14]

[Title of Court and Cause.]

**ORDER TO SHOW CAUSE.**

Upon reading and filing the complaint in equity for an injunction of plaintiff above-named, verified by A. R. Viner, Assistant Secretary of plaintiff, June 2nd, 1937, and the Court being now fully advised in the premises, and sufficient reason appearing therefor,

IT IS NOW, upon motion of Harold M. Sawyer, Esq., one of plaintiff's Solicitors, ORDERED that the defendants herein, to- [15] wit, Warren H. Pillsbury, Margaret Howland and Kenneth Howland, appear before me in my Courtroom in the Postoffice Building at the corner of Seventh and Mission Streets, in the City and County of San Francisco, State of California, at the hour of ten o'clock in the morning of the 9th day of June, 1937, or as soon thereafter as counsel can be heard, and show cause why, pending the final determination of the above cause, the compensation order and award in favor of defendants, Margaret Howland and Kenneth Howland, made and entered by defendant, Warren H. Pillsbury, as Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District, on the 5th day of May, 1937, should not be temporarily suspended and set aside and plaintiff above-named be relieved temporarily from compliance therewith.

Service of a copy of this order, if made before

5 o'clock p.m. of the 4th day of June, 1937 shall be sufficient.

DATED: San Francisco, California, this 3rd day of June, 1937.

MICHAEL J. ROCHE,  
Judge of the District Court.

[Endorsed]: Filed Jun 3, 1937. [16]

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[Title of Court and Cause.]

RETURN OF ORDER TO SHOW CAUSE

Comes now WARREN H. PILLSBURY, Deputy Commissioner of United States Employees' Compensation Commission for the 13th Compensation District, through his attorney, A. J. ZIRPOLI, Assistant United States Attorney for the Northern District of California, and for cause why, pending the final determination of the above entitled cause, the compensation order and award in favor of defendants MARGARET HOWLAND and KENNETH HOWLAND, made and entered by the defendant, Warren K. Pillsbury, as Deputy Commissioner of United States Employees' Compensation Commission for the 13th Compensation District, on the 5th day of May, 1937, should not be temporarily suspended and set aside and plaintiff above named relieved temporarily from compliance therewith, shows, as follows:

I.

That the compensation order and award which the plaintiff seeks to have temporarily set aside and



from compliance with which he seeks relief was made and entered by the defendant, Warren H. Pillsbury, Deputy Commissioner of United States Employees' Compensation Commission as aforesaid, in favor of defendants MARGARET HOWLAND and KENNETH HOWLAND and against plaintiff Moore Dry Dock Company, a corporation, on the 5th day of May, 1937, and thereafter in part amended on the 20th day of May, 1937; true and correct copies of said award and amendment were attached to plaintiff's complaint in equity for injunctive relief filed in the above entitled cause as Exhibits 1 and 2. [17]

## II.

That the financial irresponsibility of the defendants MARGARET HOWLAND and KENNETH HOWLAND and their inability to respond to any judgment that plaintiff might recover against them for payments made under the award mentioned in paragraph I hereof in the event that the above entitled Court sees fit to grant the prayer in plaintiff's bill of complaint on file herein, does not constitute irreparable damage so as to entitle plaintiff to the injunctive relief prayed for in his order to show cause.

WHEREFORE, the defendant WARREN H. PILLSBURY, Deputy Commissioner of United States Employees' Compensation Commission as aforesaid, prays that the order to show cause why his award of May 5, 1937 should not be temporarily

suspended and set aside and plaintiff above named relieved from temporary compliance therewith be dismissed and plaintiff's request for temporary injunction be denied.

A. J. ZIRPOLI,

Assistant United States Attorney for the  
Northern District of California.

[Endorsed]: Filed Jun 9, 1937. [18]

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In the Southern Division of the United States  
District Court, for the Northern District of  
California.

No. 4181-R.

MOORE DRY DOCK COMPANY,  
a corporation,

Plaintiff,

vs.

WARREN H. PILLSBURY, Deputy Commis-  
sioner of United States Employees' Compensa-  
tion Commission for the 13th Compensa-  
tion District, MARGARET HOWLAND, a  
widow, and KENNETH HOWLAND, a minor,  
Defendants.

ORDER DISCHARGING ORDER TO SHOW  
CAUSE AND DENYING APPLICATION  
FOR A TEMPORARY INJUNCTION.

This matter coming on to be heard upon an Order  
to Show Cause returnable June 9, 1937, before me,  
why, upon the allegations of the verified complaint

herein, an injunction should not be issued pending final determination of the above cause restraining defendants from enforcing the terms of an award in favor of defendant, Margaret Howland, and defendant, Kenneth Howland, made [19] May 5, 1937 by defendant, Warren H. Pillsbury, and the plaintiff herein having appeared by Harold M. Sawyer, Esq., one of its solicitors, and the defendants, Margaret Howland and Kenneth Howland having appeared by Gordon S. Keith, one of their solicitors, and defendant, Warren H. Pillsbury, having appeared by A. J. Zirpoli, Esq., Assistant United States Attorney for this district, as his solicitor, and the application for an injunction pendente lite having been argued upon the allegations of paragraph XVI of the verified complaint, and the return to the order to show cause made by defendant Warren H. Pillsbury and filed herein June 9, 1937, and no affidavits in opposition to said verified complaint having been filed, and the court now being fully advised in the premises.

The court finds that the allegations of paragraph XVI of the verified complaint herein do not constitute irreparable damage within the meaning of Section 21 of the Longshoremen and Harbor Workers' Compensation Act, and for that reason,

IT IS NOW ORDERED that the order to show cause herein be, and the same is hereby discharged



and that the application for an injunction pendente lite be, and the same hereby is, denied.

Exception to this order taken in open court by plaintiff's solicitor, Harold M. Sawyer, is hereby allowed.

DATED: San Francisco, California, June 10th, 1937.

MICHAEL J. ROCHE,  
District Judge.

Approved as to form:

S. P. MURMAN,  
Assistant United States Attorney for the  
Northern District of California.

Approved as to form:

GORDON S. KEITH,  
Solicitor for defendants, Margaret Howland  
and Kenneth Howland.

[Endorsed]: Filed Jun 10, 1937. [20]

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[Title of Court and Cause.]

### PETITION FOR APPEAL

To the Honorable Michael J. Roche, District Judge:

The above-named plaintiff, Moore Dry Dock Company, a corporation, feeling aggrieved by the order made and entered in the above-entitled cause on the 9th day of June 1937, discharging an order to show cause returnable in the above court on said

9th day of June, 1937, why, upon the verified complaint herein, an [21] award in favor of the defendants, Margaret Howland and Kenneth Howland made by defendant, Warren H. Pillsbury on the 5th day of May, 1937, should not be temporarily suspended pending final decree herein and the defendants be temporarily enjoined from enforcing the same, and denying the temporary injunction, does hereby appeal from said order to the Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the Assignment of Errors filed herewith, and it prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which the said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, under the rules of said court in such case made and provided.

DATED: June 25th, 1937.

EMMETT CASHIN,  
HAROLD M. SAWYER,  
Solicitors for Plaintiff.

[Endorsed]: Filed Jun 25, 1937. [22]

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[Title of Court and Cause.]

### ASSIGNMENT OF ERRORS

MOORE DRY DOCK COMPANY, a corporation, plaintiff herein, asserts that in the record and proceedings in the above-entitled cause and in the in-

terlocutory order entered herein June 1937, discharging an order to show cause why, pending final decree herein, the defendants should not be enjoined from enforcing the award in suit, and denying an injunction pendente lite, there is manifest error in the following particulars: [23]

FIRST: The Court erred in discharging the order to show cause why, pending final decree herein, defendants should not be restrained from enforcing the award in suit and in denying the application for the injunction pendente lite, to which denial plaintiff duly excepted and its exception was allowed.

SECOND: The Court erred in holding that the uncontradicted allegations of the verified complaint herein, and particularly the allegations of paragraph XVI thereof, do not constitute irreparable damage within the meaning of Section 21 of the Longshoremen and Harbor Workers' Compensation Act, to which holding plaintiff duly excepted and its exception was allowed.

THIRD: The Court erred in that by discharging said order to show cause and denying the application for an injunction pendente lite the Court, in effect, subjected plaintiff to the penalties of Section 14 of said Longshoremen and Harbor Workers' Compensation Act for having failed to pay said award within the time provided by said Act, notwithstanding the fact that plaintiff had in good faith,

by the verified complaint herein, challenged the jurisdiction of defendant, Warren H. Pillsbury, to make the award in suit in the first instance.

WHEREFORE, plaintiff prays that said interlocutory order made and entered herein June 10th, 1937, be reversed and that the District Court be directed by the Circuit Court of Appeals for the Ninth Circuit to issue an injunction pending final decree herein restraining the defendants from enforcing the award in suit.

DATED: June 25th, 1937.

EMMETT CASHIN,  
HAROLD M. SAWYER  
Solicitors for Plaintiff.

[Endorsed]: Filed Jun 25, 1937. [24]

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[Title of Court and Cause.]

### ORDER ALLOWING APPEAL.

On motion of Harold M. Sawyer, Esq., of solicitors for plaintiff above-named, IT IS HEREBY ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the interlocutory order made and entered herein on the 10th day of June, 1937, discharging an order to show cause why, pending final decree herein, the defendants should not be restrained from enforcing the award in suit, and denying the application for an injunction pendente lite, be, and the same is

hereby allowed and [25] that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit,

IT IS FURTHER ORDERED that the bond on appeal be fixed at the sum of Two hundred and Fifty Dollars, (\$250.00), as a bond for costs and damages on appeal.

DATED: June 25th, 1937.

MICHAEL J. ROCHE

District Judge.

[Endorsed]: Filed Jun 25, 1937. [26]

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BOND.

KNOW ALL MEN BY THESE PRESENTS, That we, MOORE DRY DOCK COMPANY, a corporation, as principal and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, a corporation, as sureties, are held and firmly bound unto WARREN H. PILLSBURY, etc., MARGARET HOWLAND, a widow, and KENNETH HOWLAND, a minor in the full and just sum of Two hundred and fifty (\$250.00) dollars, to be paid to the said WARREN H. PILLSBURY, etc., MARGARET HOWLAND and KENNETH HOWLAND certain attorney, executors, administrators, or assigns; to which payment, well and



truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of June in the year of our Lord One Thousand Nine Hundred and thirty-seven.

WHEREAS, lately at a District Court of the United States for the Northern District of California, Southern Division, in a suit depending in said Court, between Moore Dry Dock Company, a corporation, plaintiff, vs. Warren H. Pillsbury, Deputy Commissioner of United States Employees' Compensation Commission for the 13th Compensation District, Margaret Howland, a widow, and Kenneth Howland, a minor, defendants an order was made against the said Moore Dry Dock Company, plaintiff, and the said Moore Dry Dock Company, a corporation, having obtained from said Court an order permitting an appeal to reverse the said order in the aforesaid suit, and a citation directed to the said Warren H. Pillsbury, etc., Margaret Howland and Kenneth Howland, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the thirtieth day from the 25th day of June, 1937.

Now, the condition of the above obligation is such, That if the said Moore Dry Dock Company,

a corporation, shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make its appeal good, then the above obligation to be void; else to remain in full force and virtue.

[Seal]

MOORE DRY DOCK  
COMPANY  
J. A. MOORE

Pres.

[Seal]

INDEMNITY INSURANCE  
COMPANY OF NORTH  
AMERICA

By HARRY C. MILLER

Attorney-in-Fact.

Acknowledged before me the day and year first  
above written.

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State of California

City and County of San Francisco—ss.

On this 29th day of June in the year one thousand  
nine hundred and thirty-seven, before me, Dorothy  
H. McLennan, a Notary Public in and for the City  
and County of San Francisco, State of California,  
residing therein, duly commissioned and sworn,  
personally appeared Jos. A. Moore known to me

to be the President of the corporation described in and that executed the within instrument, and also known to me to be the person—who executed the within instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal]

DOROTHY H. McLENNAN,

Notary Public in and for the City and County  
of San Francisco, State of California.

My Commission Expires December 24, 1938.

It is further hereby expressly agreed that in case of a breach of any condition of the above obligation and this bond, the said Southern Division of the United States District Court for the Northern District of California, Second Division, may, upon notice to the INDEMNITY INSURANCE COMPANY OF NORTH AMERICA of not less than ten (10) days, proceed summarily in the above entitled case therein pending to ascertain the amount which said INDEMNITY INSURANCE COMPANY OF NORTH AMERICA is bound to pay



on account of such breach, and render judgment therefor against it, and award execution therefor.

[Seal]

INDEMNITY INSURANCE  
COMPANY OF NORTH  
AMERICA,

By: HARRY C. MILLER,  
Attorney-in-Fact

MOORE DRY DOCK  
COMPANY  
JOS. A. MOORE

President

State of California,  
City and County of San Francisco—ss.

On this 28th day of June in the year one thousand nine hundred and thirty seven, before me Emily K. McCorry, a Notary Public in and for the City and County of San Francisco personally appeared Harry C. Miller, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, and acknowledged to me that he subscribed the name of the Indemnity Insurance Company of North America thereto as principal, and his own name, as Attorney-in-fact.

[Seal]

EMILY K. McCORRY

Notary Public in and for the City and County  
of San Francisco, State of California.

My Commission Expires January 16th, 1939.

[Endorsed]: Filed Jul 1, 1937. [27]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.  
TO THE CLERK OF THE ABOVE ENTITLED  
COURT:

You are requested to take a transcript of the record and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit, omitting all captions and endorsements and all verifications except the verification of the complaint, but containing all proofs of service, and to include [28] in such transcript of record the following and no other papers, that is to say:

1. Subpoena;
2. Complaint;
3. Order to show cause and proof of service;
4. Return of order to show cause by Warren H. Pillsbury;
5. Order discharging order to show cause and denying application for a temporary injunction;
6. Petition for appeal;
7. Assignment of Errors;
8. Order allowing appeal and fixing amount of cost bond;
9. Citation and proof of service;
10. Bond on appeal;

11. Your certificate under Rule 75 that no evidence was taken;
12. This Praecipe and proof of service;
13. Your certificate.

EMMETT CASHIN,  
HAROLD M. SAWYER,  
Solicitors for Plaintiff.

Receipt of a copy hereof admitted this 30th day of June, 1937.

H. H. McPIKE,  
United States Attorney.  
WARREN H. PILLSBURY,  
Solicitor for Defendant.  
KEITH & CREEDE,

Solicitor for defendants, Margaret Howland  
and Kenneth Howland.

[Endorsed]: June 30, 1937. [29]

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In the Southern Division of the United State District Court for the Northern District of California.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 29 pages, numbered from 1 to 29, inclusive, contain a full, true, and correct transcript of the records and proceedings in the cause entitled MOORE DRY DOCK COMPANY, Plaintiff, vs. WARREN H. PILLS-

BURY, etc., et al, No. Equity 4181-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$4.40 and that the said amount has been paid to me by the Attorneys for the appellant herein.

I further certify that no evidence was taken and the issue was determined solely from the records submitted herewith and oral argument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 12th day of July, A. D. 1937.

[Seal]

WALTER B. MALING,

Clerk.

By J. P. Welsh, Deputy Clerk. [30]

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### CITATION ON APPEAL

UNITED STATES OF AMERICA—ss:

THE PRESIDENT OF THE UNITED STATES  
OF AMERICA,

TO WARREN H. PILLSBURY, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District; Margaret Howland, a widow, and Kenneth Howland, a minor, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit

Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California wherein Moore Dry Dock Company, a corporation is appellant, and you are appellees, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable MICHAEL J. ROCHE, United States District Court Judge for the Northern District of California this 25th day of June, A. D. 1937.

MICHAEL J. ROCHE,  
United States District Judge.

Receipt of a copy of the within is hereby admitted this 29th day of June, 1937.

KEITH & CREEDE,  
GORDON S. KEITH,

Receipt of a copy of the within is hereby admitted this 29th day of June, 1937.

H. H. McPIKE,

[Endorsed]: Filed Jun. 29, 1937 [31]



[Endorsed]: No. 8600. United States Circuit Court of Appeals for the Ninth Circuit. Moore Dry Dock Company, a corporation, Appellant, vs. Warren H. Pillsbury, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District, Margaret Howland, a widow and Kenneth Howland, a minor, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 14, 1937.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of  
Appeals for the Ninth Circuit.